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TO

Print sender's name, address, and ZIP Code in the space below.

United States  
Environmental Protection Agency  
Region III  
641 Chestnut Building  
Philadelphia, PA 19107

BHW16

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AUG 31 1988

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Harvey and Harvey, Inc.  
300 Harvey Drive  
Wilmington, DE 19804

Re: Army Creek Landfill Superfund Site  
(Notice Letter)

Dear Mr. Harvey:

The United States Environmental Protection Agency (EPA or Agency), by this letter, notifies you that Harvey and Harvey, Inc. as successors in liability for Harvey & Knotts Inc. is a Potentially Responsible Party (PRP) for contamination at the Army Creek Landfill Superfund site, New Castle County, Delaware. EPA has information indicating that Harvey and Knotts, Inc. either transported or disposed of waste at the Army Creek Landfill (also known as Llangollen Landfill).

EPA has determined that action at the site is necessary. EPA encourages your participation in the activities described below. As further described below, EPA hereby requests that Harvey and Harvey, Inc. notify EPA, within fourteen (14) calendar days of receipt of this letter, whether it is interested in participating in this project. If we do not hear from you by that time, EPA will assume that Harvey and Harvey, Inc. will not participate in the project.

Under Sections 106(a) and 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sections 9606(a) and 9607(a) (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law No. 99-499, 100 Stat. 1613 (October 17, 1986) (SARA), responsible parties may be obligated to implement any needed relief actions as determined by EPA and may also be liable for all costs incurred by the government in responding to any release or threatened release of hazardous substances at the site. Such costs can include, but are not limited to, expenditures for investigation, planning, cleanup of the site, and enforcement.

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Under Section 107(a) of CERCLA, responsible parties are liable for the cost of response actions. Responsible parties include: 1) present owners or operators of the site; 2) owners or operators at the time of disposal; 3) any persons who arranged for disposal or treatment of hazardous substances at the site; and, 4) transporters of hazardous substances to the site. EPA's records indicate that Harvey and Harvey, Inc. is a responsible party under CERCLA Section 107(a) (4).

The EPA has expended public funds to investigate releases of hazardous substances at the Army Creek Landfill. EPA may spend additional public funds on action to further investigate and control those releases. Unless EPA determines that a PRP will properly perform such actions, EPA intends to do so pursuant to Section 104 of CERCLA, 42 U.S.C. Section 9604, and 49 C.F.R. Section 300.68.

On September 30, 1986, the EPA Regional Administrator signed a Record of Decision (ROD) for the first operable unit at the Army Creek site. The ROD required implementation of source controls, including a RCRA-type landfill cap and the continued operation of the downgradient recovery well network. Selection of a treatment alternative for the recovered groundwater and a decision on appropriate remedial measures for sediments in Army Creek will be the subject of a second operable unit ROD.

Specifically, EPA is planning to conduct the following studies at the Army Creek site unless an acceptable agreement can be reached:

1. Remedial Investigation (RI) - Further investigations to define the nature and extent of surface water and sediment contamination at the site.
2. Feasibility Study (FS) - A study to evaluate potential remedial alternatives with emphasis on risk reduction through actions that utilize treatment to permanently and significantly reduce the toxicity, mobility, or volume of hazardous substances, pollutants, or contaminants.

In addition to the above studies, you may be asked at a later date to undertake, or may be liable for, any additional corrective measures necessary to protect public health and welfare, or the environment. Such measures may include, without limitation:

1. Implementing emergency removal actions, e.g., securing the site to prevent contact with any hazardous substances that may be present at the site and/or removal of contaminated material from the surface of the site;
2. Implementing expedited response actions, non-time-critical removal actions taken when the Agency decides to implement a cleanup that does not require extensive study. This type of action must be clearly defined and limited in scope and duration;

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3. Designing and implementing the EPA-approved remedial option; and
4. Providing any monitoring and maintenance necessary after remedial measures are completed.

EPA will consider an immediate offer from Harvey and Harvey, Inc. to conduct (under EPA supervision) the RI/FS described above in accordance with a work plan consistent with the enclosed RI/FS guidance. Under Section 104(a) of CERCLA, 42 U.S.C. Section 9604(a), the President must determine that the responsible parties are qualified to conduct the RI/FS, will promptly and properly complete the same and agree to reimburse the government for any costs incurred by or in connection with the RI/FS in order to allow the PRP to undertake such action. Any agreement to perform the RI/FS will be embodied in a Consent Order issued under Section 104 or Section 106 of CERCLA, 42 U.S.C. Section 9604 or Section 9606.

If Harvey and Harvey, Inc. should decide to participate in the RI/FS process, please indicate that interest in a letter to the EPA project officer identified below within fourteen (14) calendar days of receipt of this letter. Your letter should indicate the appropriate name, address, and telephone number for further contact with Harvey and Harvey, Inc. If EPA does not hear from Harvey and Harvey, Inc. by that time, EPA will assume that Harvey and Harvey, Inc. declines any involvement in the RI/FS and will proceed with the appropriate studies and any expedited response actions needed to secure the site. EPA may later invite Harvey and Harvey, Inc. to undertake the design and implementation of the selected remedy upon the Agency's completion of the RI/FS. If Harvey and Harvey, Inc. is already involved in discussions with State or local authorities, engaged in voluntary action, or involved in a lawsuit regarding this site, you should not interpret this letter to advise or direct Terranova & Sons Inc. to restrict or discontinue any such activities. On the other hand, this letter should not be interpreted as endorsing any such efforts. You should report, however, the status of those discussions or that action in your letter. You should also be aware that this site cannot be deleted from the CERCLA National Priorities List until the necessary remedial work has been concluded in accordance with the enclosed RI/FS guidance and EPA's National Contingency Plan.

Your letter should be addressed to:

Eric Newman (31W16)  
U. S. Environmental Protection Agency  
Region III  
DELMARVA/WV/DC CERCLA Remedial Enforcement Section  
841 Chestnut Building  
Philadelphia, PA 19107

Should Harvey and Harvey, Inc. express a willingness to conduct or participate in the RI/FS, as described above, EPA will refrain from expending funds for the site for a period of time so that meaningful discussions concerning a Consent Order can take place.

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In addition, under Section 122(e) of CERCLA, 42 U.S.C. 9622(a), responsible parties may be extended the opportunity to present a good-faith proposal to conduct the RI/FS to the Agency within sixty (60) days of receipt of a "special notice" letter. A special notice letter may be forwarded to you at such time that Harvey and Harvey, Inc. has expressed some interest in participating in the RI/FS and the Agency determines that such notice would facilitate an agreement and expedite remedial action.

The factual and legal discussions contained in this letter are intended solely for notification and information purposes. They are not intended to be and cannot be relied upon as a final agency position on any matter set forth herein.

This information request is not subject to Office of Management and Budget Review under the Paperwork Reduction Act, 44 U.S.C. Sections 3501-3520.

If you have any questions regarding the foregoing, please contact Mr. Newman at 215-597-9238.

Sincerely,

Stephen R. Wassersug, Director  
Hazardous Waste Management Division

cc: Brian Nishitani  
Office of Regional Counsel (3RC22)  
  
Suzanne Canning  
Office of Regional Counsel (3RC00)  
  
Bruce M. Diamond, Director  
Office of Waste Programs Enforcement

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